




PROSECUTING HUMAN TRAFFICKING IN ARIZONA


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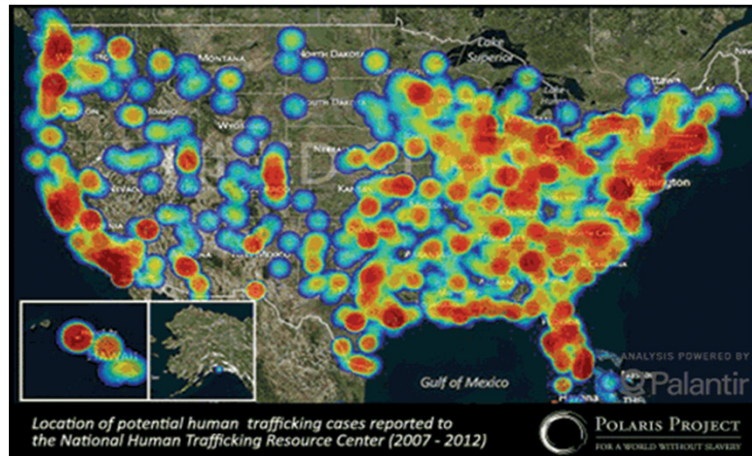
What is Human Trafficking

The federal Trafficking Victims Protection Act defines human trafficking as:

- Sex trafficking in which a commercial sex act is induced through force, fraud, or coercion or in which the person induced to perform a commercial sex act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

 **An easy to remember definition:** Human trafficking is a form of modern-day slavery where criminals profit from the unlawful control and exploitation of others.

How widespread is it?




How large of a problem is it?

There are no reliable Arizona or US statistics regarding the actual number of humans trafficked

What we do know:

- In the 2013 calendar year, the National Human Trafficking Resource Center received 35,889 calls, emails, and other online notifications about suspected human trafficking cases. 79% of these calls were substantive in nature.
- **80% of human trafficking cases investigated by the FBI & other federal agencies between 2008 & 2010 involved sex trafficking and 10% involved labor trafficking**
- 30% of youths in shelters and 70% of youths on the street are believed to be victims of commercial sexual exploitation
- A 2013 Congressional study estimated **100,000 American kids** are victims of human trafficking in the United States
- The FBI says the average life expectancy of a child once in prostitution is 7 years due to homicide and HIV/AIDS



Criminals reap huge financial rewards

- A UN report estimates the buying and selling of human beings worldwide generates approximately \$150 billion dollars a year; two-thirds of that is from sex trafficking. Global profits from human trafficking are second only to drug trafficking. The rate of growth in human trafficking, however, is outpacing all other forms of illegal enterprise.
- In 2005 in the United States, a pimp stands to earn approximately \$180,000 per underage prostitute per year. Pimps often have multiple underage prostitutes under their control.
- 75% of child prostitutes are under the control of a pimp
- A 2001 study estimated 325,000 children in North America are at risk each year to become victims of child sexual exploitation



How big of a problem is it in Arizona

- The average age a teen enters the sex trade in Arizona is 14 years old, but nationally the average age is 13
- One out of every three teens on the street will be lured into prostitution within 48 hours of leaving home
- Arizona law enforcement agencies have seen girls as young as 9 sold for sex in Arizona
- Over 300 ads are placed each day in Phoenix on Backpage.com for adult services – with an estimated 20% for girls under 18
- 78,000 men in Phoenix are online sex ad customers
- Eighty-percent of all “adult services” ads are placed on Backpage.com. Backpage.com is listed as a privately held Arizona corporation, with headquarters in Phoenix, Arizona and offices in Texas




Super Bowl XLIX will be in Arizona on February 1, 2015



Crimes You Might Encounter In Trafficked Persons Cases

- Kidnapping- A.R.S. §13-1304
- Unlawfully Obtaining Labor or Services ARS §13-1306
- Sex Trafficking ARS §13-1307
- Trafficking of Persons for Forced Labor ARS §13-1308
- Sexual Assault- A.R.S. §13-1406
- Child Prostitution- A.R.S. §13-3212
- Involve Minor in Drug Offense- A.R.S. §13-3409
- Commercial Sex Exploitation- A.R.S. §13-3552
- Luring a Minor- A.R.S. §13-3554



Other Crimes You Might Encounter In Trafficking Cases

Homicide- A.R.S. §13-1101 et seq.
 Aggravated Assault- A.R.S. §13-1204
 Custodial Interference- A.R.S. §13-1302
 Unlawful Imprisonment- A.R.S. §13-1303
 Access interference- A.R.S. §13-1305
 Sexual Conduct with Minor- A.R.S. §13-1405
 Child Molestation- A.R.S. §13-1410
 Prostitution- A.R.S. §13-1410 *et seq.*
 Forgery- A.R.S. §13-2002
 Identity Theft & Aggravated ID Theft- §13-2009
 Money Laundering- A.R.S. §13-2317
 Participating in a Criminal Syndicate- §13-2308
 Participating in Criminal Street Gang- §13-2321
 Furnish Harmful Item to Minor-A.R.S. §13-3506
 Sexual Exploitation - A.R.S. §13-3553
 Aggravated Luring a Minor- A.R.S. §13-3554
 Contributing to Delinquency- A.R.S. §13-3613
 Child Abuse- A.R.S. §13-3623

The list goes on and on. When making a charging decision, remember to look for any other offenses that allow you to complete the story, ensure victim's rights, introduce evidence, etc.



To keep today's presentation short, we can't cover them all!

Arizona's Smuggling Statute – A.R.S. §13-2319

Made it a crime to intentionally transport for profit illegal aliens. The statute also criminalized the use of real or personal property for the purposes of smuggling illegal aliens, or to procure transportation for that purpose.

On 11/07/2014 in the United States District Court for the District of Arizona, case 2:10-cv-01413-SRB, Arizona's smuggling statute was **permanently enjoined**. It is unknown if the Arizona AG will appeal or the injunction stayed.



How will the Federal Injunction impact other AZ law?

Participating In or Assisting a Human Smuggling Organization (A.R.S. §13-2323):

- Portions of this statute are probably going to be invalidated, some may survive. In my opinion, the subsections that have the best chance to survive will be those requiring proof of the following criminal conduct in furtherance of the objectives of the smuggling organization:
 - violence or intimidation;
 - bribing or influencing a public official

Unlawful Transactions Involving Drop Houses- A.R.S. §13-2322: In my opinion, this statute is probably going to be preempted by federal law

Until we get further direction from the courts, be cautious about charging violations of these statutes

Other Charging & Prosecution Considerations



Conspiracy



RICO & Gang statutes



U & T Visas



Dept. of Child Safety issues



Conspiracy A.R.S. §13-1003

- Acting with the intent to promote or aid the commission of an offense, a person agrees with one or more other persons that one of them will engage in conduct constituting the offense
- One of the parties must commit an overt act unless the object of the conspiracy was to commit a felony upon the person of another (or a first degree burglary, or arson)

Advantages of charging a conspiracy:

- Use co-conspirators statements made in furtherance of the conspiracy
- Ability to use more evidence against your defendant (e.g. more of what happened becomes intrinsic to your case)
- May give you venue and/or jurisdiction over crimes occurring in multiple counties, states and countries
- Conspiracy carries same felony class as the highest felony conspired to



RICO & Gang Considerations

- Racketeering offenses cover a wide range of crimes committed for financial gain- A.R.S. §13-2301(D)(4)
- Racketeering offenses provide for enhanced (free) subpoena powers for financial records when authorized by the AG
- Racketeering offenses provide for pretrial court management and control of assets and real property
- Racketeering offenses provide for forfeiture of proceeds of offenses

Participating In or Assisting A Criminal Street Gang- A.R.S. §13-2321

- According to the FBI, criminal street gangs involved in child prostitution include the **Bloods, Crips, Hells Angels**, as well as many others
- Charging this offense, when appropriate, will allow more evidence to be considered intrinsic to your case, and will help to explain issues such as reluctant witnesses, witnesses with extensive records, snitches, etc.
- Charging this offense, when appropriate, gives you a class 2 or 3 felony to work with

U & T Visas

- U Visas are a great tool for ensuring the availability of witnesses who might otherwise be deported prior to trial.
- U Visas are available when the witness meets all of the following conditions:
 1. Victim of a completed (or preparatory) status crime. Some examples are: involuntary servitude, prostitution, sexual exploitation, trafficking;
 2. Has suffered substantial physical or mental abuse from the crime;
 3. Has helped or is likely to help in the investigation or prosecution of the crime;
 4. Has useful information concerning the crime;
 5. The crime violated the laws of the United States or occurred in the U.S.

- A victim with a U Visa may be entitled to work in the U.S. and may apply to bring family members to the US legally.
- U Visa applications can be signed by the County Attorney or his/her designee
- **You should promptly disclose the existence of a U Visa application (and any resulting visa) to the defense**

T Visa is similar to a U Visa, but has less eligibility restrictions, and is only is available in trafficking cases

Department of Child Safety Considerations

- Crimes involving minor witnesses and victims often will have DCS involvement if the child has no available parent, or a parent is the suspect
- Each Arizona county has joint protocols for working with DCS at all stages of applicable cases, from the time the crime is discovered through trial
- A good working relationship with DCS can assist you in obtaining victim input, building rapport with the child, locating your victim or witness for testimony at hearings and trial, and may aid you in learning about the existence of discoverable evidence in DCS' possession



The CPS Law Enforcement Hotline:
1-877-238-4501

Trial Considerations

- Victims may be reluctant, afraid, in love with the defendant, or unavailable
- Victims may return to their abusers prior to trial or have nowhere else to go
- Victims may have unclean hands and/or criminal records
- Victims and witnesses may have received a U or T Visa to testify
- Victims & witnesses may need more “hand holding” and assistance during trial
- Co-defendants may be missing or absent from trial
- Language and cultural barriers (including distrust of authority figures) may exist
- Certain crimes, such as drug trafficking and prostitution may present nullification issues with some jurors



- Spend the time before trial to build a strong rapport with the victim or witness
- Consider using experts to address any issues with the forensic interviews, cultural issues, issues with failures to timely report, domestic violence issues, etc.

Involving a Minor in a Drug Offense

Defendant knowingly hires, employs or uses a minor to violate any of Arizona's drug possession or sales laws, or

Defendant sells or transfers (or offers to sell or transfer) to a minor any dangerous drug, narcotic drug, marijuana, precursor chemical, regulated chemical or equipment.

Violations are class two felonies with a flat time sentence, and if the victim is under 15 years old, are Dangerous Crimes Against Children

- A.R.S. §13-3409



Commercial Sexual Exploitation of a Minor

Defendant knowingly: Uses, employs, persuades, entices, induces or coerces a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct (or the defendant transports the minor in this state for that purpose or for the purpose of prostitution, or permits a minor in his custody or control to engage in exploitive exhibition)

Or

Defendant knowingly: Uses, employs persuades, entices, induces or coerces a minor to expose the genitals or anus or the **female areola or female nipple** for financial or commercial gain

- A.R.S. §13-3552

"Exploitive exhibition" & "Sexual conduct" are terms of art defined by statute. Note- this statute criminalizes some images involving a female child's breast.

Sex Trafficking – A.R.S. §13-1307

Defendant knowingly traffics another person with:

1. The intent to cause the other to engage in any prostitution or any explicit performance by deception, force, or coercion
2. The knowledge that the other person will engage in any prostitution or any explicit performance by deception, force, or coercion

"Traffic" means to entice, recruit, harbor, provide, transport, or otherwise obtain another person

This offense is a class two felony. If the victim is under 18 but over 15, the sentence must be consecutive to any other sentence. If the victim is under 15, the crime is a Dangerous Crime Against Children



Child Prostitution

Defendant knowingly: transports or causes a child (or permits a child under his custody) to engage in prostitution, uses the child for prostitution (i.e. the defendant is the "john") or is involved in the financing, running, or profit sharing from a child prostitution business

- A.R.S. §13-3212

Terms:

"**Prostitution**" means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.

"**Sexual conduct**" means sexual intercourse, oral sexual contact, S&M, or any direct or indirect fondling of the genitals, anus or female breast



It is not a defense that the "child" was really an undercover police officer.

Not all prostitution cases involving consenting adults are misdemeanors

Enticement of persons for purpose of prostitution- A.R.S. §13-3212 (class 6 felony)

Procuring/ placing person in house of prostitution- A.R.S. §13-3203 (class 5 felony)

Receiving earnings of a prostitute- A.R.S. §13-3204 (class 5 felony)

Causing spouse to become a prostitute- A.R.S. §13-3204 (class 5 felony)

Taking child for purpose of prostitution- A.R.S. §13-3206 (class 4 felony or DCAC)

Operating or maintaining a house of prostitution- A.R.S. §13-3208 (class 5 felony)

Pandering- A.R.S. §13-3209 (class 5 felony)

Transporting persons for prostitution- A.R.S. §13-3210 (class 5 felony)

If all else fails... don't forget about other plays in the prosecutor's playbook:

Criminal Nuisance- knowingly conducting or maintaining any premises or place where persons gather for purposes of engaging in unlawful conduct

- A.R.S. §13-2908 & 13-2917

Luring a Minor for Sexual Exploitation

Defendant offers or solicits sexual conduct with a child under 18 and has reason to know the victim is a child- A.R.S. §13-3554

"Sexual conduct" means actual or simulated genital to genital or anal intercourse, oral sex, bestiality, masturbation, S&M, some types of defecation or urination

Class 3 felony if the minor is over 15, and a DCAC if under 15.

An attempt involving a police officer "victim" can be a DCAC

-State v. Carlisle, 198 Ariz. 203 (App. 2000); Mejak v. Granville, 212 Ariz. 555, 555 n.1 (2006)



It is not a defense that the "child" was really a police officer

An aggravating factor involves sending the child sexualized images during the commission of the crime (turns it into a class 2 felony)

Child Abuse

Defendant intentionally, knowingly, recklessly, or with criminal negligence causes a child under 18 to suffer physical injury.

Or

Defendant has the care or custody of a child under 18 and intentionally, knowingly, recklessly, or with criminal negligence permits the child to be in a situation where the child's person or health is endangered.

- A.R.S. §13-3623



Intentionally, knowingly, recklessly, or with criminal negligence allowing any child to be in a vehicle or structure containing chemicals used to manufacture dangerous drugs is child abuse.



Aggravating factors to watch out for are the degree of danger the child was exposed to, and whether the child abuse was done intentionally or knowingly

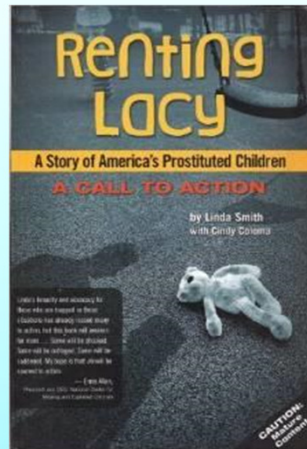
More information

<http://www.dhs.gov/blue-campaign>
http://www.fbi.gov/about-us/investigate/civilrights/human_trafficking
<http://www.polarisproject.org/>
<http://sharedhope.org/>
<http://www.trustaz.org/gi-rc-awareness.html>
http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf
<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>
<https://ssw.asu.edu/research/stir/exploring-sex-trafficking-and-prostitution-demand-during-the-super-bowl-2014>
<https://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf>

More information

<http://www.newyorker.com/magazine/2006/04/24/the-snakehead>
<http://www.newyorker.com/magazine/2014/10/13/cooka%C2%80%C2%99s-tale>
<http://america.aljazeera.com/articles/2014/2/18/teenage-drug-mulescartelsaretappingtheyoungesttosmugglemethcoke.html>
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<http://www.unodc.org/southasia/en/frontpage/2012/october/drug-mules-swallowed-by-the-illicit-drug-trade.html>
<http://www.npr.org/2011/12/04/143025654/migrants-say-theyre-unwilling-mules-for-cartels>

More information



The Usual Disclaimers

Today's presentation is a brief overview of numerous complicated topics. Many of these topics are suitable for in-depth CLE presentations of their own. Accordingly, many topics have been simplified or omitted, or perhaps just forgotten. The views (and especially any errors) in this presentation are my own. Please don't hold anyone else accountable for them.





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